

### REMARKS-General

1. The newly drafted independent claim 35 incorporates all structural limitations of the original claim 1 and includes further limitations previously brought forth in the disclosure. No new matter has been included. All new claims 35-40 are submitted to be of sufficient clarity and detail to enable a person of average skill in the art to make and use the instant invention, so as to be pursuant to 35 USC 112.

#### Response to Rejection of Claims 25-27 and 29-31 under 35USC112

2. The applicant submits that the newly drafted claims 35-40 particularly point out and distinctly claim the subject matter of the instant invention, as pursuant to 35USC112.

#### Response to Rejection of Claims 25-32 under 35USC103

3. The Examiner rejected claims 25-32 over the websites:  
[http://www.ibiblio.org/pfa/cgi-bin/arr\\_html](http://www.ibiblio.org/pfa/cgi-bin/arr_html) (referring as ibiblio) and  
<http://www.itmonline.org/arts/pain.htm> (referring as itmonline) in view of Ishida et al and JP06172196. Pursuant to 35 U.S.C. 103:

“(a) A patent may not be obtained though the invention is **not identically** disclosed or described as set forth in **section 102 of this title**, if the **differences** between the subject matter sought to be patented and the prior art are such that the **subject matter as a whole would have been obvious** at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.”

4. In view of 35 U.S.C. 103(a), it is apparent that to be qualified as a prior art under 35USC103(a), the prior art must be cited under 35USC102(a)~(g) but the disclosure of the prior art and the invention are not identical and there are one or more differences between the subject matter sought to be patented and the prior art. In addition, such differences between the subject matter sought to be patented **as a whole** and the prior art are obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains.

5. In other words, the differences between the subject matter sought to be patent as a whole of the instant invention, *ibiblio* and *itmonline* which are qualified as prior art of the instant invention under 35USC102(b) are obvious in view of *Ishida* and JP 196' at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains.

6. The website "*ibiblio*" merely discloses the properties of *Typha angustifolia* wherein the medicinal uses of the pollen is diuretic, emmenagogue, and haemostatic. The dried pollen is used internally in the treatment of kidney stones, internal haemorrhage of almost any kind, painful menstruation, abnormal uterine bleeding, post-partum pains, abscesses and cancer of lymphatic system. However, *ibiblio* never mentions any medicinal use of flavonoids which is naturally extracted from the *Typhae Pollen*.

7. The website "*itmonline*" merely discloses pollen from *Typha angustifolia* and *Typha latifolia* is rich in flavonoids and has been associated with improving blood circulation. However, *itmonline* fails to teach that the flavonoids extract is obtained from the Chinese medicine *Typhae Pollen*, wherein the flavonoids extract comprises flavonoids constituents including a kaempferol, a kaempferol-3-O-neohesperidoside, a kaempferol-3-O-(2<sup>G</sup>-α-L-rham)-rutinoside, a kaempferol-3-rutino-7-rhamnoside, a quercetin, a quercetin-3-O-neohesperidoside, a quercetin-3-O-(2<sup>G</sup>-α-L-rham)-rutinoside, a quercetin-3-rutino-7-rhamnoside, an isorhamnetin, an isorhamnetin-3-O-neohesperidoside, an isorhamnetin-3-O-(2<sup>G</sup>-α-L-rham)-rutinoside, and an isorhamnetin-3-rutino-7-rhamnoside. In addition, the only mention in *itmonline* website is flavonoids without any further disclosure in the website. In other words, *itmonline* does not disclose how the flavonoids extract can be used for treating the blood circulation problems.

8. *Ishida* merely discloses a new flavonol glucoside (isorhamnetin 3-rutinoside-7-rhamnoside) together with an unknown compound which is isolated as the antihemorrhagic principle from the pollen of *Typha lactifolia*. *Ishida* merely teaches an artificial compound of the flavonol glucoside and the unknown compound. However, the flavonoids extract of the instant invention is naturally extracted from the Chinese medicine *Typhae Pollen*. Therefore, the new flavonol glucoside disclosed by *Ishida* does not equivalent to the flavonoids extract as claimed in the instant invention.

9. JP 196` merely discloses an extract of bulrush (Typhae pollen) which improves the blood stagnation of a microcirculatory system. The Examiner alleges that the extraction of bulrush would contain flavonoids in JP 196`. The only mention in JP 196` is bulrush without any further disclosure in the specification and the drawings. In addition, the extraction process is mainly used for Artemisiae argyi folium, but not Typhae pollen. It is apparent that JP 196` fails to teach the same recitation and limitation in the claim 35 of the instant invention to extract the flavonoids extract from a Chinese medicine Typhae Pollen to have such chemical configuration.

10. The Examiner appears to reason that since Ibiblio and itmonline teach about Typha angustifolia, it would have been obvious to one skilled in the art to use Typha angustifolia to extract flavonoids from Ishida and JP 196`. But this is clearly **not** a proper basis for combining references in making out an obviousness rejection of the present claims. Rather, the invention must be considered as a whole and there must be something in the reference that suggests the combination or the modification. See Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick, 221 U.S.P.Q. 481, 488 (Fed. Cir. 1984) ("The claimed invention must be considered as a whole, and the question is whether there is something in the prior art as a whole to suggest the desirability, and thus the obviousness, of making the combination"), In re Gordon, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984), ("The mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification.") In re Laskowski, 10 U.S.P.Q.2d 1397, 1398 (Fed. Cir. 1989), ("Although the Commissioner suggests that [the structure in the primary prior art reference] could readily be modified to form the [claimed] structure, "[t]he mere fact that the prior art could be modified would not have made the modification obvious unless the prior art suggested the desirability of the modification.")

11. In the present case, there is no such suggestion. Ibiblio, itmonline, Ishida and JP 196` perform very different types of flavonoids. In any case, even combining Ibiblio, itmonline, Ishida and JP 196` would not provide the invention as claimed -- a clear indicia of nonobviousness. Ex parte Schwartz, slip op. p.5 (BPA&I Appeal No. 92-2629 October 28, 1992), ("Even if we were to agree with the examiner that it would have been obvious to combine the reference teachings in the manner proposed, the resulting package still would not comprise zipper closure material that terminates short of the end of the one edge of the product containing area, as now claimed."). That is, modifying

Ibiblio, and itmonline with Ishida and JP 196`, as proposed by the Examiner, would not provide the flavonoids extract including a kaempferol, a kaempferol-3-O-neohesperidoside, a kaempferol-3-O-(2<sup>G</sup>-α-L-rham)-rutinoside, a kaempferol-3-rutino-7-rhamnoside, a quercetin, a quercetin-3-O-neohesperidoside, a quercetin-3-O-(2<sup>G</sup>-α-L-rham)-rutinoside, a quercetin-3-rutino-7-rhamnoside, an isorhamnetin, an isorhamnetin-3-O-neohesperidoside, an isorhamnetin-3-O-(2<sup>G</sup>-α-L-rham)-rutinoside, and an isorhamnetin-3-rutino-7-rhamnoside.

12. Applicant believes that neither Ibiblio, itmonline, Ishida nor JP 196`, separately or in combination, suggest or make any mention whatsoever of using the flavonoids extract for treating a patient with blood circulation problems as recited in claim 35.

13. Applicant believes that for all of the foregoing reasons, all of the claims are in condition for allowance and such action is respectfully requested.

#### **The Cited but Non-Applied References**

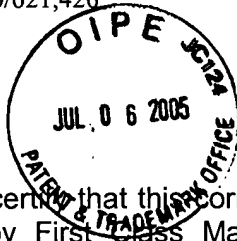
14. The cited but not relied upon references have been studied and are greatly appreciated, but are deemed to be less relevant than the relied upon references.

15. In view of the above, it is submitted that the claims are in condition for allowance. Reconsideration and withdrawal of the objection are requested. Allowance of claims 35-40 at an early date is solicited. Should the Examiner believe that anything further is needed in order to place the application in condition for allowance, he is requested to contact the undersigned at the telephone number listed below.

Respectfully submitted,



Raymond Y. Chan  
Reg. Nr.: 37,484  
108 N. Ynez Ave.  
Suite 128  
Monterey Park, CA 91754  
Tel.: 1-626-571-9812  
Fax.: 1-626-571-9813

**CERTIFICATE OF MAILING**

I hereby certify that this corresponding is being deposited with the United States Postal Service by First Class Mail, with sufficient postage, in an envelope addressed to "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" on the date below.

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Signature:

A handwritten signature in black ink, appearing to be "Raymond Y. Chan", written over a horizontal line.

Person Signing: Raymond Y. Chan